

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 1148

Introduced by Cornett, 45; Aguilar, 35; Baker, 44; Bourne, 8; Brown, 6; Byars, 30; Combs, 32; Connealy, 16; Cunningham, 40; Erdman, 47; Foley, 29; Heidemann, 1; Janssen, 15; Jensen, 20; Johnson, 37; Kruse, 13; Landis, 46; Pahls, 31; Dw. Pedersen, 39; Preister, 5; Price, 26; Schimek, 27; Schrock, 38; Smith, 48; Stuhr, 24; Stuthman, 22; Synowiecki, 7; Thompson, 14; Wehrbein, 2

Read first time January 17, 2006

Committee: Education

A BILL

1 FOR AN ACT relating to schools; to amend section 25-21,280,
2 Revised Statutes Supplement, 2005; to state intent; to
3 define terms; to provide for student possession and
4 self-administration of prescription asthma or anaphylaxis
5 medication; and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that:

2 (1) Asthma is a chronic condition, requiring lifetime,
3 ongoing medical intervention and if intervention is delayed or
4 unavailable, symptoms can escalate and result in increased severity
5 of disease, hospitalization, or death;

6 (2) In 2001, over twenty million Americans, including six
7 million children, had asthma and in 2000, there were one million
8 eight hundred thousand asthma-related visits to emergency rooms in
9 the United States, of which two hundred fourteen thousand involved
10 children under the age of eighteen years;

11 (3) According to the federal Centers for Disease Control
12 and Prevention of the Public Health Service of the United States
13 Department of Health and Human Services, (a) asthma is the leading
14 cause of missed school days, accounting for approximately fourteen
15 million missed school days annually and also accounting for a large
16 portion of work days missed by parents of children with asthma
17 and (b) according to the New England Journal of Medicine, working
18 parents of children with asthma lose an estimated one billion
19 dollars per year in productivity;

20 (4) Experiences with asthma-related deaths in the State
21 of Nebraska underscore the national problem of school age children
22 with asthma, as (a) from 1990 to 1995, Nebraska's asthma mortality
23 rate was the second highest in the United States, (b) from 1993 to
24 1998, Nebraska's asthma mortality rate continued to increase while
25 the United States asthma mortality rate decreased, and (c) in 1998,

1 the rate of emergency room visits was highest among children five
2 through fourteen years of age in Nebraska;

3 (5) (a) Anaphylaxis or anaphylactic shock is a systemic
4 allergic reaction that can cause death within minutes; (b)
5 according to the New England Journal of Medicine and other studies,
6 more children succumb to a fatal anaphylactic reaction at school
7 than at home or in another setting; (c) exposure to the affecting
8 allergen, which may be a food, a drug, or an insect sting, can
9 trigger anaphylaxis and requires prompt medical intervention with
10 an injection of epinephrine; and (d) anaphylaxis occurs in some
11 asthma patients who are at higher risk of poor health outcomes if
12 they experience anaphylaxis and, according to the American Academy
13 of Allergy, Asthma, and Immunology, people who have experienced
14 symptoms of anaphylaxis are at risk for subsequent reactions and
15 should carry autoinjectible epinephrine, if prescribed, with them
16 at all times;

17 (6) The refusal of schools to permit students to possess
18 and self-administer prescription asthma and anaphylaxis medication
19 has resulted in some tragic occurrences, including death, and
20 spawning litigation;

21 (7) At least thirty states have legislation protecting
22 the rights of children to possess and self-administer prescription
23 asthma and anaphylaxis medication and at least eighteen of these
24 states have expanded this protection to include autoinjectible
25 epinephrine;

1 (8) Schools that restrict or deny the rights of children
2 to possess prescription asthma and anaphylaxis medication put
3 students with asthma and severe allergic reactions, including
4 anaphylaxis, at risk of death and also put other students at
5 risk of witnessing a potentially life-threatening asthma attack or
6 anaphylactic reaction;

7 (9) School district medication policies should be
8 developed with the safety of all students in mind but should allow
9 for the correct and immediate self-administration of prescription
10 asthma and anaphylaxis medication to avoid serious respiratory
11 complications and improve health care outcomes;

12 (10) Students with asthma and anaphylaxis are covered
13 under the federal Americans with Disabilities Act of 1990, the
14 federal Rehabilitation Act of 1973, and the federal Individuals
15 with Disabilities Education Act;

16 (11) In October 2004, the United States Congress
17 enacted the Asthmatic Schoolchildren's Treatment and Health
18 Management Act of 2004, P.L. 108-377, which gives preferences
19 in making certain public health services administration grants
20 and other asthma-related grants to states that allow students to
21 self-administer prescription asthma and anaphylaxis medication; and

22 (12) Authorizing an audit of school records on asthma and
23 anaphylaxis will benefit the general public health by defining the
24 extent of asthma and anaphylaxis among students and by determining
25 the effect of sections 1 to 7 of this act on the well-being of

1 children with asthma and severe allergies in schools.

2 Sec. 2. For purposes of sections 1 to 7 of this act:

3 (1) Asthma or anaphylaxis medication means inhaled
4 bronchodilators or autoinjectible epinephrine;

5 (2) Parent means a biological parent, foster parent,
6 stepparent, legal guardian, or other person standing in parental
7 relation to the student; and

8 (3) Self-administration of prescription asthma or
9 anaphylaxis medication means a student's discretionary use of
10 prescription asthma or anaphylaxis medication.

11 Sec. 3. (1) A student with asthma or anaphylaxis may
12 possess and self-administer prescription asthma or anaphylaxis
13 medication while on school property or at a school-related event or
14 activity if:

15 (a) The prescription asthma or anaphylaxis medication has
16 been prescribed for the student as indicated by the prescription
17 label on the medication container;

18 (b) Self-administration is done in compliance with the
19 prescription or written instructions from the student's physician
20 or other licensed health care provider; and

21 (c) A parent of the student provides to the school:

22 (i) Written authorization, signed by the parent, the
23 student, and a representative of the school, for the student to
24 self-administer prescription asthma or anaphylaxis medication while
25 on school property or at a school-related event or activity;

1 (ii) A written statement, signed by the parent, in
2 which the parent releases the school district and its employees
3 and agents from liability for any injury arising from the
4 student's self-administration of prescription asthma or anaphylaxis
5 medication while on school property or at a school-related event
6 or activity except in cases of willful or wanton misconduct on the
7 part of an employee or agent of the district; and

8 (iii) A written statement from the student's physician
9 or other licensed health care provider, signed by the physician or
10 such other provider, which includes the asthma action plan. The
11 asthma action plan shall provide that (A) the student has asthma or
12 anaphylaxis and is capable of self-administering the prescription
13 asthma or anaphylaxis medication, (B) the name and purpose of the
14 prescription asthma or anaphylaxis medication, (C) the prescribed
15 dosage for the prescription asthma or anaphylaxis medication, (D)
16 the times at which or circumstances under which the prescription
17 asthma or anaphylaxis medication may be self-administered by the
18 student, and (E) the time period for which the prescription asthma
19 or anaphylaxis medication is prescribed. The statement shall be
20 kept on file with the school in which the student is enrolled or,
21 if there is no school nurse, in the office of such school where
22 other health records are kept.

23 (2) If a student uses his or her prescription asthma or
24 anaphylaxis medication other than as prescribed, he or she may be
25 subject to disciplinary action by the school but such disciplinary

1 action shall not limit or restrict the student's immediate access
2 to the medication.

3 Sec. 4. Immediately after self-administering prescription
4 asthma or anaphylaxis medication during school hours on school
5 property or at a school-related event or activity, the student
6 shall report to the school nurse, to the nurse's designee,
7 or to another designated adult at the school or activity to
8 enable appropriate followup care, including calling 911 emergency
9 services.

10 Sec. 5. A backup supply of the prescription asthma or
11 anaphylaxis medication to be self-administered by the student
12 pursuant to section 3 of this act shall be kept in the school's
13 health office or another unlocked location readily available to the
14 student.

15 Sec. 6. The authorization described in section 3 of this
16 act shall terminate at the end of the school year for which it is
17 signed and, if the student and his or her parent so desires, must
18 be renewed for each succeeding school year. A new authorization
19 shall be filed for each school the student attends and renewed
20 each school year until he or she graduates, ceases attending the
21 school, or no longer desires to self-administer prescription asthma
22 or anaphylaxis medication pursuant to such section.

23 Sec. 7. (1) Sections 1 to 6 of this act do not require
24 any student to possess or self-administer prescription asthma
25 or anaphylaxis medication pursuant on school property or at a

1 school-related event or activity.

2 (2) Sections 1 to 6 of this act do not create a cause of
3 action or diminish or increase the liability of any person.

4 Sec. 8. Section 25-21,280, Revised Statutes Supplement,
5 2005, is amended to read:

6 25-21,280 (1) Any person employed by a school approved
7 or accredited by the State Department of Education, employed by
8 an educational service unit and working in a school approved or
9 accredited by the department, or employed by an early childhood
10 education program approved by the department who serves as a
11 school nurse or medication aide or who has been designated and
12 trained by the school, educational service unit, or program as
13 a nonmedical staff person to implement the emergency response to
14 life-threatening asthma or systemic allergic reactions protocols
15 adopted by the school, educational service unit, or program
16 shall be immune from civil liability for any act or omission
17 in rendering emergency care for a person experiencing a potentially
18 life-threatening asthma or allergic reaction event on school
19 grounds, in a vehicle being used for school purposes, in a
20 vehicle being used for educational service unit purposes, at a
21 school-sponsored activity or athletic event, at a facility used
22 by the early childhood education program, in a vehicle being used
23 for early childhood education program purposes, or at an activity
24 sponsored by the early childhood education program which results in
25 damage or injury unless such damage or injury was caused by the

1 willful or wanton act or omission of such employee.

2 (2) The individual immunity granted by subsection (1) of
3 this section shall not extend to the school district, educational
4 service unit, or early childhood education program and shall not
5 extend to any act or omission of such employee which results in
6 damage or injury if the damage or injury is caused by such employee
7 while impaired by alcohol or any controlled substance enumerated in
8 section 28-405.

9 (3) Any school nurse, school nurse's designee, or other
10 designated adult described in section 3 of this act shall be immune
11 from civil liability for any act or omission in any situation
12 described in sections 1 to 6 of this act which results in damage
13 or injury unless such damage or injury was caused by the willful
14 or wanton act or omission of such school nurse, school nurse's
15 designee, or other designated adult.

16 Sec. 9. Original section 25-21,280, Revised Statutes
17 Supplement, 2005, is repealed.